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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KARL TERRELL TODD-BALTIMORE,

Defendant and Appellant.

F063270

(Super. Ct. Nos. VCF220545,
VCF239699)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Donn Ginoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J. and Kane, J.

In case No. VC220545, appellant, Karl Terrell Todd-Baltimore, pled no contest to carrying a loaded, unregistered firearm (former Pen. Code, § 12031, subd. (a)(1)).¹ In case No. VCF239699, Todd-Baltimore pled no contest to voluntary manslaughter (count 1/§ 192, subd. (a)) and unlawful firearm activity (count 3/former § 12021, subd. (c)(1)) and admitted a personal use of a firearm enhancement (§ 12022.5, subd. (a)) in count 1. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we affirm.

PROCEDURAL AND FACTUAL HISTORY

On April 25, 2009, Todd-Baltimore was arrested for carrying a loaded firearm that was not registered to him (case No. VC220545).

On April 28, 2009, the district attorney filed a complaint charging Todd-Baltimore with carrying an unregistered, loaded firearm.

On April 30, 2009, after Todd-Baltimore entered his no contest plea in case No. VC220545 and waived time for sentencing, the court placed him on felony probation for three years on condition that he serve 60 days' local time.

Todd-Baltimore lived with his mother, his sister, Sabrina Todd-Baltimore (Sabrina), and other relatives at his mother's house in Goshen. On the evening of July 20, 2010, Sabrina was at the house when she argued with her boyfriend, Elbert Stephens. At one point in the argument, Stephens began punching Sabrina. Stephens left after Sabrina told him that she was going to call the police. However, after the police came and left, Stephens returned to the house and continued arguing with and beating Sabrina.

At approximately 11:00 p.m., Todd-Baltimore's neighbor, B.F., was inside her house when she heard screaming coming from across the street. B.F. went outside and saw Stephens arguing with and punching Sabrina in the front yard of the Todd-Baltimore residence across the street.

¹ All further statutory references are to the Penal Code.

Sasha Banuelos visited Sabrina that evening. Banuelos was about to leave in her car when Stephens grabbed Sabrina by the throat with both hands and pushed her against Banuelos's car. Banuelos got out of the car and separated the couple. However, Stephens then grabbed Sabrina and threw her to the ground. Sabrina went and got a kitchen knife and began walking toward Stephens but Banuelos pushed her away. As Stephens was walking away, Todd-Baltimore shot him twice in the back, fatally wounding him.

On November 19, 2010, at the conclusion of Todd-Baltimore's preliminary hearing, the court held Todd-Baltimore to answer on several charges, including murder. It also found that Todd-Baltimore violated his probation in case No. VCF220545 and case No. TCM213089, an unrelated misdemeanor case.²

On December 01, 2010, the district attorney filed an information in case No. VC239699 charging Todd-Baltimore with murder (count 1/§ 187, subd. (a)), possession of a firearm by a felon (count 2/former § 12021, subd. (a)(1)), and unlawful firearm activity (count 3). Count 1 also alleged an arming enhancement pursuant to section 12022.5, subdivision (a) and section 12022.53, subdivisions (b), (c), and (d).

On June 7, 2011, Todd-Baltimore pled no contest to a reduced charge of voluntary manslaughter in count 1 and unlawful firearm activity in count 3 and admitted one of the arming enhancements (§ 12022.5, subd. (a)) in count 1 in exchange for dismissal of the remaining count and enhancements and a stipulated term of 21 years 8 months.

On August 31, 2011, in case No. VC239699, the court sentenced Todd-Baltimore in accord with his plea agreement to an aggregate term of 21 years 8 months: the aggravated term of 11 years on his voluntary manslaughter conviction, the aggregate term of 10 years on the arming enhancement in that count, and a consecutive eight-month term (one-third the middle term of two years) on his unlawful firearm activity conviction. The

² The court sentenced Todd-Baltimore to time served in case No. TCM213089 and terminated his probation in that case.

court also ordered Todd-Baltimore to pay restitution of \$7,500 to the victim's brother for the cost of the victim's funeral. In case No. VCF220545, the court imposed no additional time and terminated probation.

Todd-Baltimore's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) However, in a letter filed on February 1, 2012, Todd-Baltimore contends that his plea was coerced because he believed he would receive a life sentence if he did not accept the plea agreement. He also contends that he received ineffective assistance of counsel in entering his plea because his defense counsel did not explain the consequences of his plea and told him only that he would get a life sentence if he "lost at trial." Additionally, Todd-Baltimore complains that he should not be required to pay the full amount of restitution ordered by the court.

Todd-Baltimore's claims that his plea was coerced and that he received the ineffective assistance of counsel in entering it are not cognizable on appeal because they challenge the validity of his plea and Todd-Baltimore did not obtain a certificate of probable cause. (§ 1237.5) Moreover, section 1202.4, subdivision (f), requires the court to order full restitution to the victim or the victim's family (§1202.4, subd. (k)) for losses incurred as a result of the defendant's conduct. Todd-Baltimore did not dispute the claim by the victim's brother that he incurred \$7,500 in funeral expenses for the victim. Therefore, the court was required to order Todd-Baltimore to reimburse the victim's brother for this amount.

Nevertheless, our review of the record disclosed that Todd-Baltimore's abstract of judgment erroneously indicates that the arming enhancement was imposed pursuant to section 12022.53, subdivision (b) instead of section 12022.5, subdivision (a) and we shall direct the trial court to issue an amended abstract.

Further, following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment which shows that the arming enhancement in count 1 was imposed pursuant to section 12022.5, subdivision (a) and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.